

S.M.

Notice of Allowability

Application No.

09/918,029

Examiner

Dave T. Nguyen

Applicant(s)

FALLAUX ET AL.

Art Unit

1632

S.M.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to August 11, 2003.
2. ☒ The allowed claim(s) is/are 1-9.
3. ☒ The drawings filed on 30 July 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 08/793,170.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____. |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____ | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |

Examiner' s Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Attorney Allen Turner on November 13, 2003.

The specification has been amended as follows:

On line 2 of paragraph [0001], the phase -- now US Pat 6,602,706, -- has been inserted immediately after the phrase "2000,".

On line 3 of paragraph [0001], the phase -- now US Pat 6,238,893, -- has been inserted immediately after the phrase "1999,".

Claims 1, 3 -6, 8 and 9 have been amended as follows:

1. (currently amended) A recombinant nucleic acid molecule produced by the action of a nucleic acid polymerase in a complementing cell comprising at least the E1A gene of an adenovirus on a precursor molecule; wherein

said recombinant nucleic acid molecule is a nucleic acid molecule based on or derived from an adenovirus,

said recombinant nucleic acid molecule has at least one functional inverted terminal repeat,

said recombinant nucleic acid molecule comprises all other adenovirus derived genetic information not present in said complementing cell and necessary for replication, and

said recombinant nucleic acid molecule is in a linear and single stranded form and comprises, at the molecule's 3' terminus, a recombinantly fused sequence complementary to an upstream part of the same strand of the recombinant nucleic acid molecule, to allow said recombinantly fused sequence and said upstream part to form base pairs and function as a start-site for said nucleic acid polymerase.

3. (currently amended) The recombinant nucleic acid molecule of claim 1, wherein said recombinant nucleic acid molecule comprises a nucleic acid having an adenovirus hr 400-404 mutation.

4. (currently amended) The recombinant nucleic acid molecule of claim 1, wherein said recombinant nucleic acid molecule comprises an adenovirus E2A ts125 mutation.

5. (currently amended) The recombinant nucleic acid molecule of claim 1, wherein said recombinant nucleic acid molecule comprises an adenovirus E2 region under the control of an inducible promoter.

6. (currently amended) An isolated cell comprising the recombinant nucleic acid molecule of claim 1.

8. (currently amended) The recombinant nucleic acid molecule of claim 1, wherein said recombinant nucleic acid molecule lacks overlapping sequences with the nucleic acid of the complementing cell into which it is transferred, said overlapping sequences otherwise enabling homologous recombination leading to replication competent adenovirus in the complementing cell.

9. (currently amended) The recombinant nucleic acid molecule of claim 1, wherein said recombinant nucleic acid molecule lacks a functional encapsidation signal.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner *Dave Nguyen* whose telephone number is **(703) 305-2024**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Deborah Reynolds*, may be reached at **(703) 305-4051**.

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The official fax number as of August 4, 2003 is **703-872-9106**.

Any inquiry of a general nature or relating to the status of this application should be directed to the *Group receptionist* whose telephone number is **(703) 308-0196**.

Dave Trong Nguyen
Primary Examiner
Art Unit: 1632



DAVE T. NGUYEN
PRIMARY EXAMINER